



**The Comptroller General
of the United States**

Washington, D.C. 20548

Acasiewicz - PL

Decision

Matter of: Marine Transport Lines, Inc.

File: B-224480.5

Date: July 27, 1987

DIGEST

Protest that a solicitation requirement that certain employees have prior experience aboard a cable ship is unduly restrictive is denied where the agency establishes that the requirement contributes to the safe and effective operation of cable ships, and the protester does not show otherwise.

DECISION

Marine Transport Lines, Inc. (MTL) protests the experience requirements for cable ship crewmembers in request for proposals (RFP) No. N00033-86-R-4006, issued by the Military Sealift Command (MSC), Department of the Navy, for cable-laying operations. MTL contends that the experience requirements are unduly restrictive of competition. We deny the protest.

The RFP was issued as part of a cost comparison, in accord with Office of Management and Budget Circular A-76, to determine whether contracting for the work would be more cost-effective than continuing to perform it in-house. Under a contract, the contractor would operate and maintain up to five cable ships. RFP section C-1.5.1.2.4 provided that certain key positions must be staffed by persons with experience aboard cable ships, the amount of experience varying by position. For instance, masters on at least three of the ships each must have a minimum of 12 months experience aboard a cable ship as either masters or cable officers. Only 30 days experience aboard cable ships, however, is required of first assistant engineers. No prior cable ship experience is required for electronics engineers or medical personnel.

The RFP initially required offerors to include in their proposals the resumes of the persons offered under section C-1.5.1.2.4. The RFP also required offerors to have such persons in their employ or, in the alternative, to have firm written commitments from those persons.

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MSC issued two amendments after this protest was filed: amendment 0010, deleting the above requirements and permitting both the selection of employees after award and the submission of resumes 60 days before the ship is turned over to the contractor; and amendment 0011, authorizing the contracting officer to waive prior cable ship experience "with respect to any individual after considering that individual's experience in conjunction with the mission of the particular ship to which he will be assigned."

Although the RFP amendments have essentially eliminated the experience requirements from consideration during the award evaluation, MTL believes the requirements nevertheless are unduly restrictive because offerors still must be prepared to satisfy the requirements in the event they receive the award.

When a protester challenges a solicitation requirement as unduly restrictive of competition or as unreasonable, the procuring agency must establish prima facie support for the requirement as essential to meet the agency's minimum needs. See Ray Service Co., 64 Comp. Gen. 529 (1985), 85-1 C.P.D. ¶ 582. We will uphold the requirement unless the protester shows that the requirement in fact is unnecessary and unreasonable. See Professional Helicopter Service, B-202841, et al., Mar. 17, 1982, 82-1 C.P.D. ¶ 251.

MSC states that the challenged experience requirements are justified here because laying and repairing cable demands knowledge and experience not readily acquired from the performance of other seafaring tasks. MSC claims that if key personnel do not possess the minimum cable ship experience established in the RFP, then there is an enhanced risk of: delays in cable laying that could jeopardize vital intelligence-gathering operations; loss or damage to expensive cable systems; and severe injury to the crew due to mishandling of high voltage cables that are laid at high speeds and under extreme tensions.

MSC states further that cable ship experience, though not required in the past, is relevant now because these ships have become more sophisticated over the years, and direct MSC supervision will be limited if a contract is awarded. MSC explains that it thus established the experience requirements based upon a staffing study, and tailored the amount of experience for each of the eight positions that require cable ship experience to conform to the degree of responsibility inherent in each position.

MTL raises several arguments in rebutting MSC's justification, principally asserting that instead of

applying a fixed experience requirement that may or may not ensure capable seamen, MSC could consider factors such as training, familiarization programs, and other experience. MTL maintains that MSC essentially acknowledged that this approach is desirable in adopting amendment 0011. MTL points out that MSC never has imposed experience requirements in the past when operating its own ships and claims it is unfair to impose this requirement on offerors when, if MSC retains the function in-house, it will not be subject to the same requirement.

We do not believe the experience requirements have been shown to be unreasonable or unduly restrictive. Rather, the record adequately establishes that MSC's cable ship operations are sufficiently sophisticated and hazardous that a reasonable amount of cable ship experience will help to ensure competent performance and to minimize mishaps. It appears that MSC went to reasonable lengths both to limit the crewmember positions needing cable ship experience (9) and to limit the amount of experience required (12 months for master, who must be expert at all cable ship operations, and no more than 12 months for any other position). The reasonableness of MSC's approach also is evidenced by information in the record that the experience levels were the result of compromises within MSC.

While MTL does not agree that cable ship operation is significantly more sophisticated or hazardous than operation of other ships, we think the record shows MSC reasonably determined otherwise. An MSC chief engineer states, for example, that whereas senior engineers on most commercial ship operations are responsible only for maintenance and operation of the propulsion and auxiliary systems, such engineers on cable ships are also required to provide all crew training in the operation and maintenance of all cable and deck machinery. The engineers also are involved in the actual cable-laying operations, which tasks, the chief engineer reports, are learned only through actual experience. Given these responsibilities in the context of the laying of expensive cable at high speeds to promote Navy intelligence gathering, we believe the 30 day to 12 month experience requirements for these positions are unobjectionable.

MSC does not provide similarly detailed information for all other crewmember categories, but we believe the record as a whole so clearly establishes that MSC's safety and technical concerns are reasonably founded given the mission of cable ships, that the requirement that other crewmembers have up to 1 year of cable ship experience simply does not appear unreasonable. MTL may believe the consideration of other crewmember qualifications will adequately ensure safe,

effective cable ship operation, but MSC is of the view, and we agree, that these experience levels will at least minimize operational risks due to inexperience on board an operating cable ship.

Our position here is consistent with our general view that, where a solicitation requirement relates to human safety or national defense, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness. See American Airlines Training Corp., B-217421, Sept. 30, 1985, 85-2 C.P.D. ¶ 365. Further, when a contractor will be performing a critical or dangerous task, or will be operating in a unique work setting, an agency may require that the contractor's personnel possess prior experience in performing such tasks or operating in the same type of work setting. Professional Helicopter Service, B-202841, supra.

The fact that MSC may not previously have required crewmembers operating its cable ships to have specified levels of cable ship experience does not render unreasonable or improper the decision to add the requirements for this procurement. Indeed, we tend to agree with MSC that, given the fact that its cable ship operations may for the first time be contracted out under this solicitation, and that MSC supervision of the operations thus will be reduced, the experience requirements now are more significant than previously.

MTL's suggestion that MSC unfairly will not be bound by the experience requirements appears unfounded. MSC reports that, on average, its crewmembers currently possess far in excess of the cable ship experience called for under the solicitation. In any case, MSC would not become subject to the requirements until sometime after the contracting decision has been made; any argument concerning MSC compliance at this time therefore is purely speculative.

Finally, MSC's adoption of amendment 0011, providing that cable ship experience may be waived where the contracting officer deems it warranted, in no way indicates, as MTL suggests, that the experience requirements really are unnecessary. Rather, we view this amendment as a reasonable attempt by MSC to eliminate the requirement to the extent feasible without compromising a legitimate need for some degree of cable ship experience. Moreover, assuming, as we must, that MSC will exercise its discretion under this provision reasonably, the provision could well operate to alleviate MTL's concern that the experience requirements are too inflexible.

The protester has claimed reimbursement of its protest costs, including attorney's fees. Under our Bid Protest Regulations, we will declare a protester entitled to such fees only if we determine that a solicitation does not comply with statute or regulation. 4 C.F.R. § 21.6(d)(1) (1986). Because we find the solicitation requirement in question to have a rational basis, the protester is not entitled to recover its protest costs.

The protest is denied.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel